

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

ERIC PASSMORE,)
Plaintiff,)
v.) Case No. 06-3225-CV-S-NKL-SSA
MICHAEL J. ASTRUE,)
Commissioner of Social Security,)
Defendant.)

ORDER

Pending before the Court is Defendant's Motion to Dismiss as premature Plaintiff Eric Passmore's ("Passmore") petition for fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. On February 7, 2007, the Court entered an order granting Passmore's Motion for Summary Judgment on his due process right to cross-examine the examining physician appointed by the ALJ [Doc. #16]. Passmore subsequently prevailed in his claim for benefits at the remanded hearing. The Defendant filed its Notice of Appeal of the Court's February 7, 2007 Order on June 26, 2007. Pursuant to the EAJA, an application for attorney fees may be submitted to the court by a prevailing party "within thirty days of final judgment in the action." 28 U.S.C. § 2412(d)(1)(B). "Final judgment" means that the judgment is no longer appealable. 28 U.S.C. § 2412(d)(2)(G). Because the Defendant is appealing the Court's order to the Eighth Circuit, the judgment is not final.

Accordingly, it is hereby

ORDERED that Defendant's Motion to Dismiss [Doc. # 25] is GRANTED.

s/ Nanette K. Laughrey
NANETTE K. LAUGHREY
United States District Judge

Dated: September 21, 2007
Jefferson City, Missouri